112 Fed. 35, that an adjudication in bankruptcy which resulted in depriving the bankrupt broker of stock which he had agreed to transfer, amounts to a breach, is referred to without criticism in *In re Imperial Brewing Co., supra.* The Supreme Court would probably not hold bankruptcy to be an anticipatory breach where it appears that the bankruptcy proceedings have not impaired the ability of the bankrupt to perform his part of the contract. But it is to be regretted that the rule of the court, in the principal case, even as thus limited and however beneficial it may be in other respects, furnishes a rather simple method for an unscrupulous insolvent debtor to defraud his creditors by making "improvident" executory contracts with his confederates.

BANKRUPTCY—POWER OF DISTRICT COURT TO DETERMINE VALIDITY OF TAXES.—A corporation made a padded return of its assets to the state tax commissioner. Later the corporation was adjudicated bankrupt. *Held,* the claim of the state for the amount of the assessment based on the padded return should not be allowed. *In re E. C. Fischer Corp.* (1915) 229 Fed. 316.

§ 64 of the Bankruptcy Act, which gives priority to claims for taxes, provides that the bankruptcy court shall have the power to determine the amount and legality of such taxes. The Supreme Court of the United States held that this provision gave the bankruptcy court power to review a tax assessed by a state board upon a corporation which failed to make a tax return although the state statute provided that such tax should be final. *New Jersey* v. *Anderson,* 203 U. S. 483. In *In re Otto Freund Arnold Yeast Co.,* 178 Fed. 305, the tax was regularly assessed and levied and was neglected up to a time when under the state law no review or objection to the legality of the tax was possible, but the court held that the statutory legality of the tax from the standpoint of regularity is no bar to the bankruptcy court's power to determine whether the property supposed to be taxed actually existed. *Accord*: *In re Selwyn Importing Co.* (D. C.) 18 Am. B. R. 190; *In re Heffron Co.,* 216 Fed. 642. But in *In re Bushnell,* 215 Fed. 651, the court was of the opinion that the failure of the bankrupt to pursue the remedy allowed by the statute of the state deprived his trustee of the right to complain that the assessments are excessive. In this case, as in the principal case, the assessments were based upon the valuation as evidenced by the bankrupt's returns. In those cases cited *supra,* in which the state's claim was not allowed, the courts took the view that the jurisdiction of the bankruptcy court to determine the amount and legality of the tax is not barred by the fact that the tax was assessed, levied and declared to be proper by competent state authority. The effect of such a holding is to give the trustee a greater right than the bankrupt himself had, so far as jurisdictional questions are concerned. The principal case, however, goes much further in holding that the padded tax return does not estop the trustee, although it would have estopped the bankrupt before the institution of the bankruptcy proceedings.

BILLS AND NOTES—BONA FIDE PURCHASER.—The officers of the defendant corporation each morning signed in blank sufficient checks to meet the demands of the day. These checks were kept in the office under conditions that

made a theft easily possible. One such check was stolen; filled in as to date, name of payee and amount, and then negotiated to the plaintiff who took for value without notice. Payment was refused by the bank, and the plaintiff is seeking to recover from the company which signed the check. Judgment for the plaintiff. *Phillips* v. *A. W. Joy Co.,* (Me. 1916) 96 Atl. 727.

The decisions under the law merchant were in direct conflict concerning the situation that arose when a stolen instrument came into the hands of a bona fide purchaser. The leading case of *Baxendale* v. *Bennett,* L. R. 3 Q. B. D. 525 (1878) laid down the proposition that there could be no liability on the part of a maker or drawer without delivery; that without delivery there was no contract, and a stolen instrument, therefore, even in the hands of an innocent holder, was valueless. BRAMWELL, J., in delivering the opinion anticipated such a case as the instant one, by saying "suppose he had signed a blank check, with no payee, or date, or amount, and it was stolen, would he be liable or accountable not merely to his banker the drawee, but to a holder?" The question implies a negative answer, even upon the assumption that the maker was negligent in keeping the check where it might have been stolen. In such a case the crime of theft, and not the negligence, was the proximate cause of the fraud; and there could be no estoppel "because the maker has not said or done anything contrary to the truth so that he should be prevented from setting up the truth." See also *Bank of Ireland* v. *Evans' Trustees,* 5 H. L. C. 389. Numerous American cases followed this doctrine. *Burson* v. *Huntington,* 21 Mich. 416; *Branch* v. *Sinking Fund,* 80 Va. 427; *Dodd* v. *Dunne,* 71 Wis. 578; *Palmer* v. *Poor,* 121 Ind. 135. The contrary doctrine, however, is adopted in *Kinyon* v. *Wohlford,* 17 Minn. 239; *Gould* v. *Segee,* 5 Duer (N. Y.) 268; *Worcester County Bank* v. *Dorchester and Melton Bank,* 10 Cush. 488. The latter doctrine is more in harmony with the spirit of the Law Merchant, which permits the negotiability of instruments of this sort in the interest of commerce, and was accordingly adopted in the Uniform Negotiable Instruments Law in the following words: "But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all the parties prior to him, so as to make them liable to him, is conclusively presumed." Maine, however, is one of the few states that have not yet adopted the Negotiable Instruments Law, and therefore the decision in the instant case must have been arrived at without any statutory assistance. An examination of the cases cited by the court shows that the one Maine case directly in point is authority for a decision contrary to the one herein handed down, *Salley* v. *Terrill,* 95 Me. 553; and the three others involved a different situation. Thus, in *Nutter* v. *Stover,* 48 Me. 163, there was a delivery for a specific purpose not apparent on the face; and in *Abbott* v. *Rose,* 62 Me. 194, and *Kellogg* v. *Curtis,* 65 Me. 59, there was a signing and delivery of an instrument under the belief that it was of a character different from that of a negotiable instrument. In *Sally* v. *Terrill,* supra, there was a theft even after the note had already been filled in and made payable to the person who actually stole it, yet it was held that an innocent purchaser could not recover. The court in the instant case sought to differentiate the two cases, but it is submitted that a fortiori the decision in the present case should have been

adverse to the bona fide purchaser. Though this decision does not seem to be supported by the prior Maine cases, it is nevertheless the one that would probably be rendered in the 46 states that have adopted the Negotiable Instruments Law.

BOUNDARIES—ESTABLISHMENT BY ACQUIESCENCE.—Defendant company took possession in 1913 of a twenty foot strip of land in the east side of its right of way which had theretofore been fenced as a part of the tract of land now owned by plaintiff; the fence had been erected in 1899 and had since been recognized by both parties as the boundary line. Plaintiff acquired title to her tract in 1908 by a deed which did not include the twenty foot strip in its description. Plaintiff brings an action to quiet her title to this strip. *Held*, in affirming decree for the plaintiff, that the fence was established as a boundary line by the acquiescence of the parties for ten years. *Helmick* v. *Davenport, R. I. & N. W. Ry. Co.* (Iowa 1916) 156 N. W. 736.

There is a conflict of authority as to what circumstances will make possession adverse when the entry was by mistake. One line of decisions following in the lead of *French* v. *Pearce*, 8 Conn. 439, holds that possession is the important element and that an occupation of land by the claimant as owner is necessarily adverse. *Searles* v. *DeLadson*, 81 Conn. 133; *Mielke* v. *Dodge*, 135 Wis. 388; *Ovig* v. *Morrison*, 142 Wis. 243; *Metcalfe* v. *McCutcheon*, 60 Miss. 145; *Yetzer* v. *Thoman*, 17 Ohio St. 130; *Bayhouse* v. *Urquides*, 17 Idaho 286; *Miles* v. *Penn. Coal Co.*, 245 Pa. St. 94. Another line of cases influenced by *Brown* v. *Gay*, 3 Greenl. (Me.) 126, considers the intent of the claimant as a decisive criterion in determining the character of his possession. If the claimant occupied with the intention of holding only to the true line his possession was not adverse, *Grube* v. *Wells*, 34 Iowa, 148, *Preble* v. *Me. Cent. R. R. Co.*, 85 Me. 260; *Wilson* v. *Hunter*, 59 Ark. 626; *Ayers* v. *Reidel*, 84 Wis. 276; *McCabe* v. *Bruere*, 153 Mo. 1; *Taylor* v. *Fomby*, 116 Ala. 621; *Winn* v. *Abeles*, 35 Kan. 85; *King* v. *Brigham*, 23 Or. 262; *Aldrich Mining Co.* v. *Pearce* (Ala.) 68 So. 900. But if he occupied with the intention of holding to the line whether it were correct or not his possession would be adverse. *Somner* v. *Compton*, 52 Or. 173; *Gloyd* v. *Franck*, 248 Mo. 477; *Rosenmeier* v. *Marenholz*, 179 Ind. 467; *Bruce* v. *Washington*, 80 Tex. 368; *St. Louis S. W. Ry. Co.* v. *Mulkey*, 100 Ark. 71; *Edwards* v. *Fleming*, 83 Kan. 653; *Jacobs* v. *Disharon*, 113 Md. 92; *Moore* v. *Fowler*, 58 Ore. 292; *Johnson* v. *Ingram*, 63 Wash. 554. In determining the intent of the claimant the presumption recognized by the court is usually decisive. Some courts presume a holding under mistake to be in subordination to the paper title and not adverse, but by the weight of authority such a holding is presumed to be adverse. See 11 MICH. LAW REV. 57.

In Iowa under the doctrine of *Grube* v. *Wells*, supra, as modified by *Doolittle* v. *Bailey*, 85 Iowa 599, possession of land beyond the true boundary by mistake may or may not be adverse depending upon the presence or absence of an intention to claim title. *Gordon* v. *Ferree*, 101 Iowa 440, 444; *Fullmer* v. *Beck*, 105 Iowa 518. However this doctrine was heavily cut away by the recognition in *Miller* v. *Mills County*, 111 Iowa 654, of the principle